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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 MARY L. JOHNSON, a Washington  
11 resident ,

12 Plaintiff,

13 v.

14 METRO-GOLDWYN-MAYER STUDIOS  
15 INC., TWENTIETH-CENTURY FOX  
16 HOME ENTERTAINMENT LLC., MGM  
17 HOLDINGS INC., and TWENTY-FIRST  
CENTURY FOX INC., Delaware  
corporations,

18 Defendants.  
19

Case No. C17-541 RSM

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT'S  
MOTION TO DISMISS

20 **I. INTRODUCTION**

21 “Will the real ‘James Bond’ please stand up?”<sup>1</sup> This case hinges on which films should  
22 and should not be included in DVD and Blu-ray box-sets of “all” James Bond films. This matter  
23 comes before the Court on Defendants Metro-Goldwyn-Mayer (“MGM”) Studios Inc.,  
24 Twentieth-Century Fox Home Entertainment LLC., MGM Holdings Inc. (“MGM Holdings”),  
25 and Twenty-First Century Fox Inc.’s Rule 12(b)(6) Motion to Dismiss. Dkt. #17. Specifically,  
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28 <sup>1</sup> See the back-panel packaging of MGM and Twentieth Century Fox’s 2011 *Casino Royale Collector’s Edition* in Blu-ray. CASINO ROYALE (1967).

1 Defendants request dismissal of Plaintiff's three claims: violation of the Washington State's  
2 Consumer Protection Act ("WCPA"), RCW § 19.86.090, breach of express warranty, and breach  
3 of implied warranty of merchantability. Dkt. #1-2 at ¶¶ 80, 82, and 88. Defendants also move  
4 to dismiss all claims against corporate parents MGM Holdings and Twenty-First Century Fox.  
5 In the alternative, Defendants move to strike class allegations. Plaintiff Mary L. Johnson opposes  
6 Defendants' Motion, arguing that she has alleged facts sufficient for the Court to find Defendants  
7 violated the WCPA, and breached an express warranty and implied warranty of merchantability.  
8 Dkt. #27.

10 At this time, the Court will *Live and Let Die*.<sup>2</sup> For the reasons set forth below, the Court  
11 GRANTS IN PART AND DENIES IN PART Defendants' Motion.

## 13 II. BACKGROUND

14 On March 17, 2016, Plaintiff, Mary L. Johnson, filed suit against Defendants, MGM  
15 Studios Inc. and Twentieth-Century Fox Home Entertainment LLC., and their respective  
16 corporate parents MGM Holdings and Twenty-First Century Fox Inc., in King County Superior  
17 Court. Dkt. #1-2. Plaintiff is a Washington State resident. *Id.* at ¶ 2. All four Defendants are  
18 incorporated in Delaware with principal places of business in California. *Id.* at ¶ 48.

20 Plaintiff alleges Defendants falsely represent their James Bond DVD and Blu-ray box-  
21 sets, advertising their inclusion of "all" James Bond movies. *Id.* at ¶ 35. Plaintiff claims two  
22 James Bond movies were omitted from Defendants' box-sets, and brought this class action on  
23 behalf of consumers in multiple states who were similarly misled. Dkt. #1-2 at 2-3. This case  
24 was removed to the United States District Court for the Western District of Washington on April  
25 7, 2017. Dkt. #1.

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28 <sup>2</sup> LIVE AND LET DIE (1973).

1 Defendant MGM acquired the video rights to all James Bond films produced by Eon  
2 Productions, a company based in the United Kingdom. Dkt. #1-2 at ¶¶ 14, 19. In 1997,  
3 Defendant MGM acquired the rights to the 1967 film *Casino Royale* and 1983 film *Never Say*  
4 *Never Again*. *Id.* at 2. Eon Productions did not produce these two films. Both *Casino Royale*  
5 and *Never Say Never Again* were excluded from the Defendants' box-sets. *Id.*  
6

7 Defendant Twentieth Century Fox distributes movies in DVD and Blu-ray formats. *Id.*  
8 at ¶ 16. Since 1999, Defendants MGM and Twentieth Century Fox have maintained video  
9 distribution agreements. *Id.* at ¶ 17. Pursuant to these agreements, Twentieth Century Fox  
10 handles all marketing and distribution of James Bond DVDs and Blu-rays for MGM. *Id.*  
11

12 From 2012 to 2016, Defendants released three James Bond DVD and Blu-ray box-sets  
13 for sale. *Id.* at 2. In 2012, Defendants released a DVD box-set entitled *Bond 50, Celebrating*  
14 *Five Decades of Bond 007*, including 22 films produced by Eon Productions. *Id.* at ¶ 23. In  
15 2015, Defendants released another DVD box-set, entitled *The Ultimate James Bond Collection*,  
16 including 23 films. *Id.* at ¶ 26-27. Finally, in 2016, Defendants released a Blu-ray box-set,  
17 entitled *The James Bond Collection*, also including 23 films. *Id.* at ¶ 29. The box-sets' packaging  
18 include MGM and Twentieth Century Fox trademarks, and a small-print list of included films.  
19 The box-sets' packaging does not note the existence or omission of *Casino Royale* and *Never*  
20 *Say Never Again*. *Id.* at ¶ 34.  
21

22 MGM maintains video rights to EON Production films, as well as *Casino Royale* and  
23 *Never Say Never Again*. *Id.* at ¶ 40. However, only the EON films were included in the box-  
24 sets. *Id.* The Blu-ray Collector's Edition of *Casino Royale* contains both Defendants MGM and  
25 Twentieth Century Fox trademarks. *Id.* at ¶ 46. The Blu-ray Collector's Edition of *Never Say*  
26 *Never Again* only features Defendant Twentieth Century Fox's trademark. *Id.* at ¶ 43.  
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1 The three box-sets and two Blu-rays are sold individually at “brick and mortar” stores  
2 and on Amazon.com (“Amazon”). *Id.* at ¶¶ 50, 52. Additionally, MGM’s website offers sales  
3 through Amazon. *Id.* at ¶ 57. In February 2016, Plaintiff purchased one of the box-sets from  
4 Amazon for \$106.44. *Id.* at ¶ 49. Plaintiff claims Amazon “served as intermediary in the  
5 transaction between Plaintiff and Defendants,” and Amazon “reproduce[d] Defendants’ false and  
6 misleading representations that the box-sets contain ‘all’ of the James Bond movies.” *Id.* at ¶ 51.  
7 At the time Plaintiff filed her complaint, Amazon sold *Casino Royale* and *Never Say Never Again*  
8 for \$29.99 and \$39.38, respectively. *Id.* at ¶ 58.

10 Plaintiff contends she purchased a box-set, relying on its claim to contain “[a]ll the Bond  
11 films,” and she would not have purchased a box-set if she knew it excluded *Casino Royale* and  
12 *Never Say Never Again*. *Id.* at ¶ 54. Nor would she have purchased the box-set at the price she  
13 paid. *Id.* Plaintiff claims by excluding these two films Defendants misled her and engaged in  
14 “unfair and deceptive business practices,” resulting in her loss of money. *Id.* at ¶ 51. To complete  
15 her collection of James Bond films, Plaintiff would need to spend an additional \$69.37 plus tax  
16 and shipping. *Id.* at ¶ 59. Plaintiff claims Defendants knew or should have known that purchasers  
17 would rely on packaging statements and expect the box-sets included all the James Bond films.  
18 *Id.* at ¶ 62.

21 On March 17, 2016, Plaintiff filed her Complaint, seeking money damages from past and  
22 future profits obtained from Defendants alleged deception and unjust enrichment. *Id.* at ¶ 63-64.  
23 Defendants move to dismiss Plaintiff’s claims pursuant to Rule 12(b)(6).

### 25 III. DISCUSSION

#### 26 A. Legal Standard

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1 In making a Rule 12(b)(6) assessment, the Court accepts all facts alleged in the complaint  
2 as true, and makes all inferences in the light most favorable to the non-moving party. *Baker v.*  
3 *Riverside County Office of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (internal citations omitted).  
4 However, the Court is not required to accept as true a “legal conclusion couched as a factual  
5 allegation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*,  
6 550 U.S. 544, 555 (2007)). The Complaint “must contain sufficient factual matter, accepted as  
7 true, to state a claim to relief that is plausible on its face.” *Id.* at 678. This requirement is met  
8 when the plaintiff “pleads factual content that allows the court to draw the reasonable inference  
9 that the defendant is liable for the misconduct alleged.” *Id.* The Complaint must have “more  
10 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will  
11 not do.” *Twombly*, 550 U.S. at 555. Absent facial plausibility, Plaintiff’s claims must be  
12 dismissed. *Id.* at 570.

15 Where a complaint is dismissed for failure to state a claim, “leave to amend should be  
16 granted unless the court determines that the allegation of other facts consistent with the  
17 challenged pleading could not possibly cure the deficiency.” *Schreiber Distrib. Co. v. Serv-Well*  
18 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

## 20 **B. WCPA Claim**

21 The WCPA makes “[u]nfair methods of competition and unfair or deceptive acts or  
22 practices in the conduct of any trade or commerce . . . unlawful.” RCW § 19.86.020. Trade and  
23 commerce include the “sale of [items of value], and any commerce directly or indirectly affecting  
24 the people of the state of Washington.” RCW § 19.86.010(2)-(3). Claimants alleging “unfair or  
25 deceptive act or practice” must plead the act or practice injures the public interest by violating a  
26 statute or injuring other persons in the past, present, or future. RCW § 19.86.093(1)-(3). To  
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1 determine “‘if there is a representation, omission or practice that is likely to mislead’ [or deceive]  
2 a reasonable consumer,” courts review language as the least sophisticated reader would. *Panag*  
3 *v. Farmers Ins. Co. of Wash.*, 204 P.3d 885, 895 (Wash. 2009) (en banc) (citing *Sw. Sunsites,*  
4 *Inc. v. Fed. Trade Comm’n*, 785 F.2d 1431, 1435 (9th Cir. 1986); *Jeter v. Credit Bureau, Inc.*,  
5 760 F.2d. 1188, 1171 (11th Cir. 1985)).

6  
7 Plaintiff alleges Defendants violated the WCPA through false statements printed on the  
8 packaging of three James Bond DVD and Blu-ray box-sets. Plaintiff further alleges the sales of  
9 the box-sets with misleading packaging “constitute unfair or deceptive acts or practices in trade  
10 or commerce that affects the public interest that has caused injury to Plaintiff’s business or  
11 property and the Class’s business or property.” Dkt. #1-2 at ¶ 79.

12  
13 Defendants assert Plaintiff knew or should have known the box-sets’ contents because a  
14 reasonable consumer would review the box-sets’ outer packaging and open the box-sets to review  
15 their inner contents. Dkt. #17 at 27. Lastly, Defendants’ Motion asserts the term “all” is not  
16 actionable as a deceptive act. *Id.* at 18.

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18 Citing *Freeman v. Time Inc.*, Defendants assert that under a “reasonable consumer  
19 standard” the label’s language should be considered in the “context” of the entire package, rather  
20 than as an individual statement. 68 F.3d 285, 289 (9th Cir. 1995); Dkt. #17 at 14. Defendants  
21 rebut Plaintiff’s claim that the words “all” and “every” mislead consumers to believe all James  
22 Bond films ever made are included in the box-sets, since the box-sets’ bottom packaging lists  
23 which films are included. *Id.* *Freeman* holds that a reasonable consumer reads all text and  
24 disclaimers, rather than just bolded text. 68 F.3d at 290. In *Bobo v. Optimum Nutrition, Inc.*,  
25 similar arguments were made vis-a-vis product packaging including disclaimers with instructions  
26 and ingredient lists. NO. 14CV2408, 2015 WL 13102417 (S.D. Cal. Sept. 11, 2015). Here,  
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1 Defendants argue a reasonable consumer would review the box-sets' packaging in its entirety,  
2 including its listed films. Dkt. #17 at 16. From this list, a consumer would make an educated  
3 decision whether or not to purchase the box-sets. *Id.*

4 While the box-sets' packaging includes a list of films, these lists do not disclose the  
5 omission of *Casino Royale* and *Never Say Never Again*. Plaintiff notes that packaging may be  
6 accurate yet deceptive, and that a package's representation may be unfair without being  
7 deceptive. Dkt. #27 at 12-13 (citing *Panag*, 204 P.3d at 895); *Klem v. Wash. Mut. Bank*, 295  
8 P.3d 1179, 1187 (Wash. 2013) (en banc)). Thus, Plaintiff argues, even though the box-sets  
9 accurately list which films are included, a reasonable consumer may be deceived by the omission  
10 of the two James Bond films.  
11

12 Plaintiff equates the box-sets to nutrition labels on packaged food. Specifically, Plaintiff  
13 cites *Williams v. Gerber Prod. Co.*, in which fruit snack packaging was found to be deceiving.  
14 552 F.3d 934 (9th Cir. 2008). "Reasonable consumers should not be expected to look beyond  
15 misleading representations on the front of the box to discover the truth from the ingredient list in  
16 small print on the side of the box." *Id.* at 939. Plaintiff argues that "[t]he reasonable consumer  
17 here has no reason to doubt that the 'ingredient list' reflects something other than 'all' of the  
18 Bond Films and that she can rely on the Defendants' representations. Yet, it does not." Dkt. #27  
19 at 17. Since Defendants do not address whether a reasonable consumer would know *Casino*  
20 *Royale* and *Never Say Never Again* were excluded, the Court finds Defendants' "packaging in its  
21 context" defense unconvincing.  
22

23 Defendants next argue the box-sets' inner packaging adequately informs consumers  
24 which films are included. Defendants cite *In re Samsung Elecs. Am., Inc. Blu-Ray Class Action*  
25 *Litig.*, in which the court denied a breach of implied warranty claim when the inside packaging  
26

1 clearly disclosed contents and features of the product. No. 08-0663(JAG), 2008 WL 5451024,  
2 at \*4 (D.N.J. Dec. 23, 2008). Also cited is *Berenblat v. Apple, Inc.*, where a claim of breach of  
3 implied warranty of merchantability was dismissed because the plaintiff had pre-sale notice of  
4 the warranty included inside the product's packaging. No 08-4969 JF (PVT), 2010 WL 1460297,  
5 at \*3-4; Dkt. #27 at 19. Similar to Defendants' application of *Freeman* and *Bobo*, their  
6 application of *Samsung* and *Benenblat* does not address how a reasonable consumer would know  
7 *Casino Royale* and *Never Say Never Again* are omitted.

9       Next, Defendants claim Plaintiff's reliance on the box-sets' terms "all" and "every" are  
10 not actionable. Defendants cite the unpublished opinion in *Babb v. Regal Marine Indus., Inc.*, in  
11 which the court held statements that are "mere puffery" and "subjective" are not actionable. Dkt.  
12 #17 at 17-18; No. 4934-4-II, 2014 WL 690154, at \*3 (Wash. App. Feb. 20, 2014). Defendants  
13 equate "all" and "every" to puffery. *Id.* However, in *Babb*, plaintiff relied on milder language:  
14 "strive[s] to provide exceptional customer service." *Babb* at \*1. Here, Defendants do not cite  
15 cases defining "all" or "every" as puffery. Defendants' Motion also neglects the fact that "a  
16 statement is considered puffery if the claim is extremely unlikely to induce consumer reliance."  
17 *Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1053 (9th Cir. 2008) (citing *Cook,*  
18 *Perkiss, & Liehe v. Northern California Collection Service, Inc.*, 911 F.2d 242 (9th Cir. 1990)).  
19 Defendants contend that an objective standard of "all" cannot be applied to James Bond films  
20 because the inclusion of films "is a matter of artistic judgement." Dkt. #29 at 9. On Reply,  
21 Plaintiff emphasizes that "all" and "every" "are neither subjective nor vague." Dkt. #27 at 20.

22       The Court finds the questions of how a reasonable person would interpret "all" and  
23 "every" and what qualifies as a James Bond film remain for the trier of fact to decide. These  
24 terms are not unequivocally puffery as a matter of law. Defendants fail to adequately address  
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1 Plaintiff's argument as to the omission of *Casino Royale* and *Never Say Never Again* or the need  
2 for a disclaimer. Dkt. #27 at 14, 16. Even if a reasonable consumer examines the box-sets' entire  
3 packaging, they would only know which films are included. That consumer would *not* know  
4 whether the box-set includes "all" James Bond films or which films are excluded. This could  
5 constitute a deceptive act under the WCPA. The Court finds Plaintiff has adequately pled a claim  
6 for relief under the WCPA.  
7

### 8 **C. Breach of Express Warranty Claim**

9 Plaintiff pleads Defendants breached an express warranty by omitting *Casino Royale* and  
10 *Never Say Never Again*, causing damage to Plaintiff and Putative Class members. Dkt. # 1-2 at  
11 ¶¶ 84-85.  
12

13 Defendants contend that Plaintiff's actual knowledge of the box-sets' contents nullifies  
14 her claim for breach of express warranty. Dkt. #17 at 19. Defendants state "an express warranty  
15 is not created if the buyer has 'actual or imputed knowledge of the true condition of the good.'" Dkt. #17 at 18 (citing *Fed. Signal Corp. v. Safety Factors, Inc.*, 886 P.2d 172, 179 (Wash. 1994)).  
16 Defendants also cite *Bryant v. Wyeth*, in which a medication's packaging did not create an  
17 express warranty because it included general statistics about health risks rather than promises  
18 about the drug's safety. 879 F. Supp. 2d 1214, 1227 (W.D. Wash. 2012).  
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21 Defendants cite RCW § 62A.2-313(2), "a statement purporting to be merely the seller's  
22 opinion or commendation of the goods does not create a warranty," but omit RCW § 62A.2-  
23 313(1)(a), "[a]ny affirmation of fact or promise made by the seller to the buyer which relates to  
24 the goods and becomes part of the basis of the bargain creates an express warranty that the goods  
25 shall conform to the affirmation or promise." The Supreme Court of Washington remanded *Fed.*  
26 *Signal Corp. v. Safety Factors, Inc.* in part to determine if the seller's statements met RCW §  
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1 62A.2-313(1)(a)'s requirement of an "affirmation of fact or promise" to establish an express  
2 warranty. 886 P.2d 172, 178 (Wash. 1994). "The more specific a statement, the more likely it  
3 is an affirmation of fact or a promise." *Id.* In that case, the Court noted that written statements  
4 in advertisements and brochures are "less likely to be puffery." *Id.* at 179.

5 As the Court has already found, the record shows only that Plaintiff could have had actual  
6 or imputed knowledge of the included films, not the excluded ones, and thus not whether "all"  
7 James Bond Films were included. Plaintiff's Response notes, "[w]hether statements constitute  
8 an express warranty on which a buyer relies involves questions of fact for a jury to resolve." Dkt.  
9 #27 at 21 (citing *Berschauer Phillips Const. Co. v. Concrete Sci. Servs. Of Seattle, L.L.C.*, 135  
10 Wash. App. 1025 (2006)). Therefore, the Court must leave it to the jury to determine whether  
11 the box-sets' representations establish an affirmation of fact or promise of a complete  
12 compilation of James Bond movies under RCW § 62A.2-313(1)(a). Likewise, a jury must  
13 determine whether a reasonable person would expect *Casino Royale* and *Never Say Never Again*  
14 to be included in a complete set of James Bond films. The Court agrees that the pleadings, taken  
15 as true, create questions of fact which preclude dismissal at this stage. From the Defendants'  
16 perspective, this claim will have to *Die Another Day*.<sup>3</sup>

#### 20 **D. Breach of Implied Warranty of Merchantability Claim**

21 Plaintiff asserts she purchased a box-set that did not comply with its contracted  
22 description, resulting in a breach of implied warranty under on RCW § 62A.2-314. Dkt. #1-2 at  
23 ¶ 90. A good is merchantable when it conforms to its contract description, contain the "quality  
24 and quantity" permitted by the agreement, is adequately labeled, and "conform[s] to the promises  
25 or affirmations of fact made on the container or label." RCW § 62A.2-314(2)(a-f).  
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<sup>3</sup> DIE ANOTHER DAY (2002).

1 Defendants argue there is no contractual relationship between the parties from which a  
2 breach of implied warranty of merchantability could arise. Dkt. #29 at 10. Under Washington  
3 State law, “lack of privity . . . [is] a defense to claims of breach of warranty.” *Tex. Enters., Inc.*  
4 *v. Brockway Standard, Inc.*, 66 P.3d 625, 628 (Wash. 2003). Defendants claim Plaintiff is a  
5 “vertical non-privity plaintiff” who purchased her box-set from Amazon, an intermediate  
6 distributor. Dkt. #29 at 10. In other words, a “‘vertical’ non-privity plaintiff” is a buyer who is  
7 in the distributive chain, but did not buy the product directly from the defendant.” *Tex. Enters.,*  
8 *Inc.*, 66 P.3d at 628. Typically, there is no implied warranty when a purchaser buys a product  
9 from an intermediate distributor. *Id.* at 626.

11 Plaintiff argues she meets a third-party beneficiary exception to the privity rule. Dkt. #27  
12 at 22. Under the “sum of the interaction” and “expectation” tests, implied warranties are  
13 enforceable if the manufacturer was involved in the transaction, knew the purchaser’s identity  
14 and purpose, communicated with the purchaser, or delivered the good. *Id.* at 22-23 (citing  
15 *Touchet Valley Grain Growers, Inc. v. Opp & Seibold Gen. Constr., Inc.*, 831 P.2d 724, 730  
16 (Wash. 1992) (en banc)). However, third-party beneficiaries are not entitled to recovery when a  
17 manufacturer is unaware of the party’s identity or did not intended to sell to that particular party.  
18 *Id.* (citing *Tex. Enters., Inc.*, 66 P.3d at 629). In *Lohr v. Nissan North America, Inc.*, this Court  
19 dismissed plaintiff’s breach of implied warranty claims against defendant-manufacturer who did  
20 not know the plaintiff’s identity. No. C16-1023, 2017 WL 1037555, at \*7 (W.D. Wash. Mar.  
21 17, 2017). Even though plaintiff purchased an automobile from an authorized dealership  
22 contracted with defendant-manufacturer, plaintiff had not pled facts to conclude they were a  
23 third-party beneficiary. *Id.* Similar to automobiles in *Lohr*, here purchasers can buy James Bond  
24 box-sets directly from Defendants or from authorized distributors. While Defendants have their  
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1 own Amazon webpage on which they sell products, Plaintiff has not pled whether she purchased  
2 her box-set from Defendants' Amazon page or another Amazon page. Dkt. #29 at 11; Dkt. #27  
3 at 21. Accordingly, this claim is properly dismissed for lack of privity.

4 The Court dismisses this claim with leave to amend. *Schreiber Distributing Co. v. Serv-*  
5 *Well Furniture Co., Inc.*, sets the standard for dismissing a claim with leaves to amend – “[i]f a  
6 complaint is dismissed for failure to state a claim, leave to amend should be granted unless the  
7 court determines that the allegation of other facts consistent with the challenged pleading could  
8 not possibly cure the deficiency.” 806 F.2d 1393, 1401 (9th Cir. 1986) (*citing Bonanno v.*  
9 *Thomas*, 309 F.2d 320, 322 (9th Cir. 1962)). Plaintiff may amend her claim once if she discovers  
10 sufficient facts to establish privity; thus, this claim may *Only Live Twice*.<sup>4</sup>

#### 13 **E. Action Against Corporate Parents**

14 The Court finds that Plaintiff has not pled specifics against Defendants' corporate parents,  
15 Twenty-First Century Fox and MGM Holdings. In her Complaint, Plaintiff asserts only that  
16 Twentieth-First Century Fox makes marketing decisions, not Twenty-First Century Fox. Dkt.  
17 #1-2 at ¶ 15. Similarly, Plaintiff's Complaint asserts only that MGM owns the distribution rights  
18 to the James Bond movies, not MGM Holdings. Dkt. #1-2 at ¶ 14. Defendants' Motion notes  
19 that “Plaintiff has not alleged that either Twenty-First Century Fox or MGM Holdings played  
20 any role in the production or sale of the box set at issue and therefore has not stated a claim  
21 against either entity.” Dkt. #17 at 20. In Plaintiff's Response, she argues that since MGM  
22 Holdings and Twenty-First Century Fox may make marketing decisions regarding the box-sets  
23 it would be premature for the Court to dismiss this case before discovery:  
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26 None of the Defendants have filed an answer to the Complaint  
27 denying such and no discovery has been done in this case. Discovery  
28 might reveal the corporate parents in this case are liable to Plaintiff

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<sup>4</sup> YOU ONLY LIVE TWICE (1967).

1 on a variety of legal theories that either involve and arise from their  
2 own actions vis-à-vis Plaintiff or the Sets or stem solely from the  
3 acts of their subsidiary agents. Regardless, the corporate parents'  
4 liability (or lack thereof) cannot rightly be determined at this early  
5 stage of the litigation given the broad allegations of joint liability set  
6 forth in the Complaint and because the principal-agent relationship  
is normally a question of fact to be decided by the jury 'corporate  
parents' liability (or lack thereof) cannot be determined at this early  
stage of litigation.

7 Dkt. #27 at 23-24 (citing *T-mobile USA, Inc. v. Huawei Device USA, Inc.*, 115 F. Supp. 3d 1184  
8 (W.D. Wash. 2015)). The Court disagrees.

9 In order for the Court to allow Plaintiff's claims against MGM Holdings and Twenty-  
10 First Century Fox continue, Plaintiff's Complaint must have asserted "enough fact[s] to raise a  
11 reasonable expectation that discovery [would] reveal evidence," needed to prove Plaintiff's  
12 claim. *Twombly*, 550 U.S. at 556. Plaintiff did not do so. Instead, Plaintiff underscores the  
13 insufficiency of her pleading, writing that "a variety of legal theories" and "[d]iscovery *might*  
14 reveal the corporate parents in this case are liable . . . ." Dkt. #27 at 23-24 (emphasis added).  
15 Accordingly, the Court grants Defendants' Motion and will dismiss Plaintiff's claims against  
16 MGM Holdings and Twenty-First Century Fox with leave to amend. *See Schreiber, supra*.  
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#### 19 **F. Class Allegation**

20 Finally, Defendants move to strike Plaintiff's class allegations on the grounds that  
21 Plaintiff's claims are individual rather than common to all consumers and that "Plaintiff's class  
22 definition is impermissibly overbroad." Dkt. #17 at 18-19. While some district courts in the  
23 Ninth Circuit permit class allegations to be struck at the pleadings stage, most courts decline to  
24 strike class allegations prior to class certification motions and discovery. *See Thornell v. Seattle*  
25 *Serv. Bureau*, No. 14-1601, 2015 WL 999915, at 6\* (W.D. Wash. Mar. 6, 2015) (citing *Sanders*  
26 *v. Apple Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009); *Cruz v. Sky Chefs, Inc.*, No. 12-02705,  
27  
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1 2013 WL 1892337, \*6 (N.D. Cal. May 6, 2013) (compiling cases)). Defendants' Motion to strike  
2 will be denied at this time. The Court will defer this matter until class certification.

#### 3 IV. CONCLUSION

4 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,  
5 and the remainder of the record, the Court hereby finds and ORDERS:  
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7 1) Defendants' Motion to Dismiss (Dkt. #17) is GRANTED IN PART AND DENIED  
8 IN PART as set forth above. Specifically:

9 a. Plaintiff's claim for violation of the Consumer Protections Act is NOT  
10 DISMISSED.

11 b. Plaintiff's claim for breach of express warranty is NOT DISMISSED.

12 c. Plaintiff's claim for breach of implied warranty or merchantability is  
13 DISMISSED WITH LEAVE TO AMEND.  
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15 d. Plaintiff's claim for MGM Holdings and Twenty-First Century Fox liability  
16 is DISMISSED WITH LEAVE TO AMEND.  
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18 e. Defendants' Motion to strike class allegation is DENIED.

19 2) Although *Diamonds Are Forever*,<sup>5</sup> if Plaintiff wishes to amend her Complaint as  
20 directed above, she only has fourteen (14) days from the date of this Order.

21 DATED this 3<sup>rd</sup> day of August 2017.  
22

23 

24 RICARDO S. MARTINEZ  
25 CHIEF UNITED STATES DISTRICT JUDGE  
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<sup>5</sup> DIAMONDS ARE FOREVER (1971).